

Regulation 2558. DISTILLED SPIRITS.

Effective October 1, 2008, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, which contains 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products, is a distilled spirit.

Authority: California Constitution, article XX, section 22; Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559. PRESUMPTION - DISTILLED SPIRITS.

Effective October 1, 2008, any alcoholic beverage, except wine as defined by Business and Professions Code section 23007, is presumed to contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products, unless this presumption is rebutted pursuant to Regulation 2559.1.

Authority: California Constitution, article XX, section 22; Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559.1. REBUTTABLE PRESUMPTION - DISTILLED SPIRITS.

(a) On or after _____, the presumption in Regulation 2559 may be rebutted by the manufacturer of the alcoholic beverage filing a report, under penalty of perjury, with the Board stating that the alcoholic beverage contains less than 0.5 percent alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products and specifying the sources of the alcohol content of the alcoholic beverage, including the alcohol by volume derived from flavors or other ingredients containing alcohol obtained by distillation.

(b) The Board shall require a manufacturer's "Statement of Process" or "Formula" filed with the Alcohol and Tobacco Tax Trade Bureau, its predecessor agency or successor, under the following circumstances: (1) if the Board obtains information that casts doubt on the accuracy or truthfulness of a report filed under subdivision (a); or (2) for purposes of verifying any report filed under subdivision (a).

(c) (1) If the Board determines that a manufacturer has not successfully rebutted the presumption in Regulation 2559, the Board shall notify the manufacturer of such determination, and the manufacturer may petition for a redetermination.

(2) Upon receiving notice from the Board, the manufacturer may petition the Board's determination within 30 days. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the 30-day period.

(3) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.

(4) The Board shall reconsider the determination pursuant to its administrative appeals process set forth in California Code of Regulations, title 18, sections 5260-5271 and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the manufacturer. Any Board hearing will be governed by the rules set forth in California Code of Regulation, title 18, sections 5510-5576.

(5) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the manufacturer, except as provided in California Code of Regulations, title 18, section 5560.

(6) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the manufacturer at the manufacturer's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure, title 5, chapter 4 (§ 416.10 et seq.).

Authority: California Constitution, article XX, section 22; Section 32451, Revenue and Taxation Code.

Reference: Sections 32002, 32452, 32453, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

* OAL to enter effective date of regulation

Regulation 2559.3. INTERNET LIST.

(a) Not later than October 1, 2008, and updated on a quarterly basis thereafter to add or remove from the list, the Board shall develop, publish and maintain on its Internet site a listing of all alcoholic beverages that have been found to have successfully rebutted the presumption set forth in Regulation 2559.

(b) Notwithstanding the addition of an alcoholic beverage to the list, the Board shall require a manufacturer's "Statement of Process" or "Formula" filed with the Alcohol and Tobacco Tax Trade Bureau, its predecessor agency or successor, under the following circumstances: (1) if the Board obtains information that casts doubt on the accuracy or truthfulness of a report filed under Regulation 2559.1, subdivision (a); or (2) for purposes of verifying any report filed under Regulation 2559.1, subdivision (a).

(c) The Board shall remove from the list an alcoholic beverage that is finally determined under subdivision (d) to contain 0.5 percent or more alcohol by volume derived from flavors or other ingredients containing alcohol obtained from the distillation of fermented agricultural products, as set forth in Regulation 2558. Before the removal may take effect, the Board shall notify the manufacturer of this determination.

(d) (1) Upon receiving notice from the Board, the manufacturer may petition the Board's determination within 30 days. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded.

(3) The Board shall reconsider the determination pursuant to its administrative appeals process set forth in California Code of Regulations, title 18, sections 5260-5271 and shall grant the applicant an oral hearing if timely requested within 30 days of the date the Decision and Recommendation issued by the Appeals Division is mailed to the manufacturer. Any Board hearing will be governed by the rules set forth in California Code of Regulation, title 18, sections 5510-5576.

(4) The order or decision of the Board upon a petition for redetermination becomes final 30 days after the date notice thereof is mailed to the manufacturer, except as provided in California Code of Regulations, title 18, section 5560.

(5) Any notice required by this section shall be placed in a sealed envelope, with postage paid, addressed to the manufacturer at the manufacturer's last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, notice may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure, title 5, chapter 4 (§ 416.10 et seq.).

Authority: California Constitution, article XX, section 22; Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.

Regulation 2559.5. CORRECT CLASSIFICATION.

Effective October 1, 2008, for purposes of tax reporting, a taxpayer will be deemed to have correctly classified an alcoholic beverage as not being a distilled spirit, as defined by Business and Professions Code section 23005, if at the time taxes are imposed, as set forth in the Revenue and Taxation Code, division 2, part 14, chapters 4, 5 and 5.5, the alcoholic beverage was included on the Board's list pursuant to Regulation 2559.3.

Authority: California Constitution, article XX, section 22; Section 32451, Revenue and Taxation Code.

Reference: Section 32002, Revenue and Taxation Code; Sections 23004, 23005, 23006, 23007, Business and Professions Code.